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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 8

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1992]

The Mfengu case: A case study in racism in violation of the International Bill of Human Rights

1. On behalf of the Tsitsikamma Exile Association, Human Rights Advocates wishes to bring to the attention of the Sub-Commission on Prevention of Discrimination and Protection of Minorities the plight of the Mfengu people of South Africa.

2. The Tsitsikamma Exile Association represents 5,000 people in the Mfengu community who were forcibly removed by the apartheid regime from Tsitsikamma to the Ciskei in 1977. In Tsitsikamma, the Mfengu occupied some 8,000 hectares of prime coastal agricultural land. The Mfengu held this land by a grant from Queen Victoria as a reward for their service in fighting on the side of the British against the Gcakejas in the border war of 1834. The British deed granting the land to the Mfengu specified that the land was to be registered in the name of either the Moravian mission church superintendent or the civil commissioner for the area and was to be held in trust for the Mfengu and their descendants.

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3. The barren homeland of the Ciskei to which the Mfengu were removed is nearly 400 kilometres away from their land - the move cost the Mfengu their livestock, their crops, their dwellings, their South African citizenship and their community life. The Mfengu received no compensation for their land. The land in the Ciskei is non-arable; those Mfengu who have stayed in the Ciskei have been reduced to a condition of poverty. The employable members of the community have been forced to become migrant workers living far from their families.

4. Beginning in 1982, the South African regime sold the Mfengu land to 19 white farmers at prices below market value and provided 100 per cent loans at low interest to assist these farmers to make improvements on the land. The land has now been developed into the most profitable dairy land in South Africa.

5. Since their exile, the Mfengu have continually sought to regain possession of their land, through court action, appeals to Parliament, and appeals to the State President, but have been consistently turned away or ignored by the South African Government. In 1977, an urgent application was made to the local division of the Supreme Court for an interdict to stop the forced removal. The application was refused by the Court. In 1985, the Appellate Division of the Supreme Court held, in a case concerning the Mogopa peoples, that the 1977 Mfengu case had been wrongly decided. In 1991, the Mfengu renewed their appeal to the Supreme Court for the return of their land on the basis that the initial removal order was null and void and on the basis that the Mfengu's right to the land had not been extinguished. Supreme Court proceedings were also instituted to prohibit the white farmers from selling the land at great personal profit and to safeguard the right of the Mfengu to the land in view of legislative changes.

6. The Mfengu and their legal representatives are presently in negotiations regarding the settlement of their claim against the South African Government for the return of the land. Pending the outcome of negotiations, the court case has been removed from the court roll.

7. The Mfengu basic claim is for the return of their ancestral land and fair compensation for the losses which the Mfengu suffered as a result of the forced removal. The Mfengu's legal representatives have indicated to the Government that the Mfengu would be willing to consider a settlement package which contained the following elements:

(a) A substantial piece of the Mfengu land for farming purposes;

(b) In addition to that, possible State-owned plantation land;

(c) An appropriate area for residential settlement, including the necessary infrastructure and housing;

(d) State assistance to return and reintegrate the community in Tsitsikamma.

The settlement package presented above would be the minimum that would be acceptable to the Mfengu.

8. The Mfengu have clearly suffered heinous discrimination and severe human rights violations in connection with their forced removal. The General Assembly of the United Nations, in its resolution 46/79 A of 13 December 1991, acknowledged that international pressure has accelerated positive developments in South Africa and continues to be necessary in that regard. For this reason, Human Rights Advocates brings the cause of the Mfengu to the attention of the Sub-Commission.

9. The United Nations has long regarded apartheid a crime against humanity. The unjust taking of lands from the indigenous tribes of South Africa by the white Government is in violation of international law recognized by the international community and documented by the Commission on Human Rights, the Sub-Commission and the General Assembly in special reports.

10. Over the past 30 years, the reports from special rapporteurs and others have documented the conditions of South Africans who have been relocated against their will. These reports recognize the right of each person to own property alone as well as collectively and not to be arbitrarily deprived of his property as set forth in article 17 of the Universal Declaration of Human Rights. This right is fundamental to the development of a non-racial democratic South Africa. (For example, E/CN.4/1992/9).

11. The African Charter on Human and Peoples' Rights, adopted by the eighteenth Assembly of Heads of State and Government of the Organization of African Unity, held at Nairobi in June 1981 and in force in 1986, recognizes these rights in article 13, paragraph 3: "Every individual shall have the right of access to public property and services in strict equality of all persons before the law." Further, article 14 of the Charter states that "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate law."

12. The recognition of these rights and the continued progress towards the total elimination of racial discrimination in South Africa can be best achieved by observance of the principles set forth in the International Convention on the Elimination of All Forms of Racial Discrimination and in particular article 5 (d) (v), which articulates the right to own property alone as well as in association with others (General Assembly resolution 45/98 of 14 December 1990 and E/CN.4/1992/9).

13. Human Rights Advocates refers the Sub-Commission to the Preliminary report on the means whereby the right of everyone to own property alone as well as in association with others fosters, strengthens and enhances the exercise of other human rights and fundamental freedoms, submitted to the Commission on Human Rights by Mr. Luis Valencia Rodríguez, Independent Expert, appointed in accordance with its resolution 1991/19 (doc. E/CN.4/1992/9).

14. Recognizing the work of the Independent Expert and the large body of United Nations authority in support of the elimination of racial discrimination, Human Rights Advocates urges the Sub-Commission to:

(a) Express its deep concern for a prompt and equitable settlement of the Mfengu claim for the return of their ancestral land and fair compensation for their losses suffered as a result of the forced removal;

(b) Further appeal to the international community to assist and enhance the role of humanitarian and human rights groups in extending assistance to the Mfengu and in monitoring their return to their land;

(c) Request that the Commission on Human Rights bring to the attention of the Independent Expert the issue of the settlement of the Mfengu claims;

(d) Request further reports on the Mfengu situation at the next Sub-Commission meeting under agenda item 5.